

NO. 48841-8-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BOBBIE HANSEN A/K/A BOBBIE HANSEN VALENTICH,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR LEWIS COUNTY

The Honorable James W. Lawler, Judge, and
The Honorable Nelson Hunt, Judge

CORRECTED OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State presented insufficient evidence to convict Bobbie Hansen of willfully failing to provide sufficient information identifying herself to a county code enforcement officer, as required by Lewis County Code (LCC) 1.20.040(4)(b)-(c), 8.45.130(4)(a), and 15.05.110(b)(1).

2. The trial court erred in denying the defense motion to suppress evidence obtained as a result of appellant's unlawful arrest pursuant to alleged violation of LCC 1.20.040(4)(b)-(c), 8.45.130(4)(a), and 15.05.110(b)(1)(b)-(c), which are unconstitutional.

3. Lewis County Code sections 1.20.040(4)(b)-(c), 8.45.130(4)(a), and 15.05.110(b)(1)(b)-(c) are unconstitutionally vague as applied.

4. The trial court erred by entering the following finding of fact following a CrR 3.6 suppression hearing:

1.10. Padgett tried to explain that he was a code compliance officer and to speak with Hansen about alleged code violations he observed on the property. Hansen was extremely difficult to communicate with.

Clerk's Papers (CP) 44.

5. The trial court erred by entering the following finding of fact pursuant to CrR 3.6:

1.11. Both Padgett and Dep. English, at separate points, asked

Hansen to provide her name. Hansen refused to provide this information. She denied being the property owner.

CP 44.

6. The trial court erred by entering the following finding of fact pursuant to CrR 3.6:

1.13. Padgett informed her that, by the county code, she had to provide identifying information when asked by a code enforcement officer, and again requested her full name. The woman refused. She denied committing any code violations.

CP 44.

7. The trial court erred by entering the following finding of fact pursuant to CrR 3.6:

1.15. Padgett did not believe he has enough information to cite Hansen for the civil infractions he had observed at this point. He referred the matter to the Lewis County Prosecutor's Office.

CP 44.

8. The trial court erred by entering the following finding of fact pursuant to CrR 3.6:

1.16. The State charged Hansen as a Jane Doe in Lewis County District Court, alleging that she willfully failed to provide identifying information as required by three sections of the Lewis County County-a misdemeanor. After finding probable cause based on affidavit, the court issued a summons.

CP 44.

9. The trial court erred by entering the following finding of fact pursuant to CrR 3.6:

1.22. Hansen failed to appear for the arraignment. Previously filed documents set forth probable cause for the failure-to-identify charge. The State informed the court of Dep. English's attempts to serve Hansen, which were described under oath Dep. English's report. The judge found probable cause that a crime had been committed and issued a bench warrant, requiring that Dep. English serve it so that the wrong person would not be arrested by accident.

CP 45.

10. The trial court erred in concluding that the challenged provisions of the Lewis County Code regarding "failure to identify" are constitutionally applied. (CrR 3.6 Conclusions of Law 2.6, 2.12, and 2.13, CP 46, 47).

11. The trial court erred in concluding that the bench warrant for the appellant's arrest was issued with probable cause. (CrR 3.6 Conclusion of Law 2.10, CP 47).

12. The trial court erred in concluding that issuance of the bench warrant, and the resulting search incident to arrest which resulted in discovery of methamphetamine were lawful where the underlying county ordinances resulting in the initial district court charge was void for vagueness. (CrR 3.6 Conclusion of Law 2.12, 2.13, and 2.14) CP 47.

13. The arrest was not supported by probable cause because the

ordinance was unconstitutional.

14. The warrantless search of the appellant was not performed incident to a valid custodial arrest.

15. Appellant was arrested pursuant to three county ordinance which are unconstitutional, rendering the ordinance and the arrest invalid

16. The trial court erred in finding the appellant guilty of possession of methamphetamine as charged in count 1.

17. The trial court erred by entering the following finding of fact pursuant to a stipulated facts trial:

1.10 Padgett tried to explain that he was a code compliance officer and to speak with Hansen about code violations he observed on the property. Hansen was extremely difficult to communicate with. She kept telling them that they had no right to be there and to get off the property.

CP 51.

18. The trial court erred by entering the following finding of fact:

1.11 Both Padgett and Dep. English, at separate points, asked Hansen to provide her name. Hansen refused to provide the information. She denied being the property owner.

CP 51.

19. The trial court erred by entering the following finding of fact:

1.13 Padgett informed her that, by law, she had to provide identifying information when asked by a code enforcement officer, and again requested her full name. The woman refused. She denied committing any code violations.

CP 51.

20. The trial court erred by entering the following finding of fact:

1.19 On June 8, 2015, Dep. English located Hansen at her property in Lewis County. As he placed her under arrest, she grabbed something from her pocket and threw it away from them. Dep. English retrieved the thrown item. It was a small glass tube containing methamphetamine.

CP 52.

21. The trial court erred by entering the following finding of fact:

1.20 The exchange between Hansen, Padgett, and Dep. English in which Hansen refused to give her full name or other identification occurred in Lewis County, Washington.

CP 52.

22. The trial court erred by entering the following findings of fact:

The defendant's testimony in this matter was not credible enough to raise a reasonable doubt as to the court's conclusions, below.

CP 52.

23. The trial court erred in entering Conclusion of Law 2.1, 2.2, 2.3, and 2.4 (Findings of Fact, Conclusions of Law, and Order Following Bench Trial; CP 52-53).

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The State charged Ms. Hansen with willfully refusing to

provide information to an authorized county representative. The Lewis County Code does not provide a definition of the terms “information,” or “information identifying.” Ms. Hansen provided her first name to county officials, had engaged in email correspondence with the county regarding the property on which the code violations are alleged to have occurred, and had written to county officials regarding the alleged violations, and the county officials apparently did in fact know her name because she was asked at the property in question if she “was Bobbie” by a code enforcement officer. Did the State fail to prove that Ms. Hansen willfully refused to provide identifying information? (Assignments of Error 1, 4, 5, 6, 7, and 8)

2. A statute or ordinance is unconstitutionally vague if it does not provide adequate notice of what conduct is prohibited or allows for arbitrary enforcement. Lewis County Code sections 1.20.040(4)(c), 8.45.130(4)(a), and 15.05.110(b)(1) require persons suspected of violations to “provide information identifying themselves.” Are the three challenged sections of the LCC unconstitutionally vague and therefore void? (Assignments of Error 2-23)

3. Are the challenged sections of the Lewis County Code unconstitutionally vague in violation of the Fourteenth Amendment to the United States Constitution and article I section 3 of the Washington State

Constitution because the requirement to provide “information identifying themselves” to authorized officials requires an ordinary person to guess at its meaning and fails to establish standards to preclude arbitrary enforcement?
(Assignments of Error 10-23)

4. Where an arrest is predicated upon an unconstitutional statute or ordinance, should all evidence seized as a result of a search incident to that arrest be suppressed, and the case dismissed? (Assignments of Error 12-26, and 23)

C. STATEMENT OF THE CASE

1. Procedural history:

Bobbie Hansen was charged by second amended information in Lewis County Superior Court with refusal to provide identifying information and possession of methamphetamine.¹ Clerk’s Papers (CP) 10-11. Ms. Hansen was initially charged in Lewis County District Court with willful failure to provide identifying information to an authorized county official. The charge was subsequently dismissed and refiled in superior court and amended information filed September 3, 2015. CP 10-11.

2. CrR 3.6 suppression hearing:

¹The state charged Ms. Hansen under Lewis County Code sections 1.20.040(4)(c), 8.45.130(4)(a), and 15.05.110(b)(1)(c), and RCW 69.50.4013. CP 10-11. Count 2 was initially filed in Lewis County District Court, and later consolidated with the felony

Defense counsel filed a motion to suppress under CrR 3.6, which was heard by the Honorable James Lawler on January 6, 2016. Report of Proceedings (RP)² (1/6/16) at 1-68, RP (1/8/16) at 73-115; CP 75-80. Ms. Hansen moved to suppress methamphetamine obtained as result of a search incident to arrest which originated from an arrest warrant issued in the District Court matter.

At the suppression hearing, defense counsel argued that Lewis County Code 1.20.040(4)(c), 8.45.130(4)(a), and 15.05.110(b)(1)(c) requiring a person to provide “identifying information” was unconstitutionally vague, and that resulting arrest warrant, issued after Ms. Hansen was charged with a misdemeanor count alleging failing to provide her name to a code enforcement officer and subsequently failing to respond to the summons, was invalid. RP (1/8/16) at 98-107.

Lewis County Code compliance Officer Smokey Padgett went to property at 200 Panisco Road in rural Lewis County, Washington on April 1, 2015, following a report of possible code violations. RP (1/6/16) at 5, 8.

charge. CP 10-11.

²The record of proceedings consists of the following hearings: June 9, 2015; June 18, 2015 (arraignment); July 16, 2015; August 6, 2015; September 3, 2015; October 22, 2015; December 10, 2015; January 7, 2016 (suppression hearing, continued); January 8, 2016 (suppression hearing, day 2); January 12, 2016 (stipulated facts trial); February 11, 2016; February 17, 2016; February 24, 2016 (sentencing); March 10, 2016 (electronic home monitoring review hearing); and March 16, 2016 (motion to vacate judgment).

While at the property he saw a pickup truck located on the property that contained a large amount of household garbage and solid waste and a structure that did not appear to be in compliance with Lewis County building ordinances. RP (1/6/16) at 6, 13. On April 20, 2015, Officer Padgett returned to the property, accompanied by Lewis County Deputy Sheriff Tim English. RP (1/6/16) at 17. Officer Padgett stated that he believed the building located on the property was occupied because it had a chimney and there were dogs on the property. RP (1/6/16) at 18. There was a recreational vehicle parked near the building. RP (1/6/16) at 18.

Officer Padgett and Deputy English called for someone to come out of the building to talk with them, and a woman with wet hair came from the structure wearing a towel, and it appeared that she had been taking a shower. RP (1/6/16) at 18. Deputy English asked her to put on clothing and secure her dogs so that they could talk. RP (1/6/16) at 18. She dressed and then returned to the front area and got the dogs under control. RP (1/6/16) at 16, 18. Deputy English and Officer Padgett walked up the driveway toward the building. RP (1/6/16) at 18. The woman yelled at them to get off her property and she stated they did not have the right to be there. RP (1/6/16) at 19. Officer Padgett and Deputy English returned to the road. RP (1/6/16)

at 19.

Officer Padgett told the woman that he was a code compliance officer for Lewis County and that he wanted to talk about alleged code violations that he observed. RP at 1/6/16) at 20. Deputy English and Officer Padgett asked the woman her name, and she did not provide her name. Officer Padgett testified at the suppression hearing that his department had contact with Bobbie Hansen prior to April 20, 2015, regarding alleged code violations. He stated:

When we sent out the notice of violation, I think the very first time it came back, I don't know the exact dates, then there was some e-mail correspondence with Bobbie Hansen with our secretary/customer service clerk in regards to informing us that there was no violations on the property.

RP (1/6/16) at 16.

Officer Padgett acknowledged that the notice of a building construction violation was sent in December, 2014 to the property owner, who was listed as Bobbie Hansen. RP (1/6/16) at 29.

While at the property on April 20, 2015, Officer Padgett told Ms. Hansen that under the county code she was required to provide identifying information when asked to do so by a code enforcement officer and requested that she provide her full name. RP at (1/6/16) at 31-33. Deputy

English testified that Officer Padgett “called her by Bobbie,” and that she confirmed that her first name was Bobbie. RP (1/6/16) at 34, 44.

On June 1, 2015, Deputy English returned to the property to serve the summons, but did not locate Ms. Hansen. Deputy English called Ms. Hansen using a telephone number provided by Officer Padgett. RP (1/6/16) at 47. Ms. Hansen arranged to meet the deputy on June 3 in order to receive the summons. RP (1/48/16) at 47. Ms. Hansen did not appear at the property at the arranged time, and after thirty minutes Deputy English called and left messages for Ms. Hansen at the number he had previously used to talk to her. RP (1/6/16) at 48.

Ms. Hansen was charged in Lewis County District Court as Jane Doe with willfully failing to provide identifying information as required under Lewis County Code 1.20.040, 8.45.130(4)(a), and 15.05.110(b)(c). The court found probable cause and issued a summons based on the finding of probable cause. Ms. Hansen did not appear for a hearing in district court regarding the misdemeanor and a bench warrant was issued. RP (1/6/16) at 49.

Deputy English subsequently located Ms. Hansen, and in the course of arresting her, he stated that she reached into one of her pockets and threw

a small glass object which later tested positive for methamphetamine. RP (1/6/16) at 50-51.

Ms. Hansen testified that she sent an email to Officer Padgett's supervisor regarding alleged code violations and also wrote a letter to the department—including Officer Padgett—in February 2013 regarding alleged violations at the property. RP (1/6/16) at 61-62. Exhibit 13. Ms. Hansen stated that the land at Panisco Road is used as recreational property and her primary house is in Yelm, Washington. RP (1/6/16) at 66. She stated that during the April 20 confrontation, Officer Padgett asked "Well, your name is Bobbie, isn't it?" and she responded that it was her name. RP (1/8/16) at 76. She stated that the officials both said that she needed to show them a driver's license or Washington State Identification, and said that she disagreed that she was required to show physical identification. RP (1/8/16) at 89.

The court denied the motion to suppress and found that the challenged sections of the Lewis County Code are constitutional. RP (1/8/16) at 111. The court entered findings of fact and conclusions of law regarding the CrR 3.5 and 3.6 suppression hearing on February 17, 2016.³

3. Stipulated facts trial:

³ The findings of fact and conclusions of law from the suppression hearing is attached to this brief as Attachment B.

Ms. Hansen waived her right to be tried by jury and the matter proceeded to a stipulated facts trial on January 12, 2016, regarding the charges of refusal to provide identifying information and possession of methamphetamine. RP (1/12/16) at 3-21. At trial, defense counsel acknowledged that while being searched incident to arrest for the warrant issued by the court, Ms. Hansen was found to be in possession of methamphetamine. Ms. Hansen challenged the issuance of the warrant and challenged whether the court submitted sufficient evidence to support violation of the Lewis County ordinances.

Officer Padgett stated that a permit was required to build on the site and to live on the property, and had knowledge that no one had applied for a permit to build there, and also that a permit was required to store solid waste, and that he was not aware of a permit having been issued. Prior to April 1, 2015, Officer Padgett had sent a Notice of Violation to Bobbie Hanson and received a returned notice signed by B. Hansen. He had also received emails from Ms. Hansen, which were sent to Officer Padgett's department.

After hearing argument from counsel regarding count 2, the trial

court found Ms. Hansen guilty of possession of methamphetamine and that she failed to provide identifying information to the code enforcement officer as charged in the amended information. RP (1/12/16) at 20-21; CP 98. The court entered findings of fact and conclusions of law on February 24, 2016.⁴ CP 49-53.

Ms. Hansen was sentenced as a first time offender to 30 days in count 1, and 90 days with 60 days suspended in count 2, to be served concurrently on electronic home monitoring, followed by 12 months of community custody, and a chemical dependency evaluation. RP (2/24/16) at 9; CP 54-62.

4. Post-conviction motion to vacate judgment

Ms. Hansen filed a pro se motion to vacate the judgment due to lack of jurisdiction. Ms. Hansen argued inter alia, that she was charged with a Lewis County Code violation, and that the county was required to provide notice of the hearing a minimum of five days prior to the hearing. RP (3/16/16) at 4. Ms. Hansen argued that she did not receive due process because Deputy English's telephone message to her was left the afternoon of Wednesday, June 3, and the hearing was heard Friday, June 5, 2015. RP at

⁴The findings of fact and conclusions of law from the stipulated facts trial is attached to this brief as Attachment C.

(3/16/16) at 4. She stated that she did not receive the message in time to go the hearing. RP (3/16/16) at 8. After hearing argument, the court found that Ms. Hansen had sufficient notice of the district court hearing and denied Ms. Hansen's motion to vacate the judgment. RP (3/16/16) at 10-21.

Timely notice of appeal was filed on March 10, 2016. CP 90. This appeal follows.

C. ARGUMENT

1. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO CONVICT MS. HANSEN OF WILLFULLY REFUSING TO PROVIDE IDENTIFYING INFORMATION REGARDING HER IDENTITY TO COUNTY OFFICIALS.

Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt. The State bears the burden of proving each element of the crime charged beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence. *Id.*; U.S. Const. amend. XIV; art. I, § 3; *City of Seattle v. Slack*, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). On appellate review, evidence is sufficient to support a conviction

only if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318, 99 S.Ct. 628, 61 L.Ed.2d 560 (1970); *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

"The reasonable-doubt standard is indispensable, for it impresses on the trier of fact the necessity of reaching a subjective state of certitude on the facts in issue." *State v. DeVries*, 149 Wn.2d 842, 849, 72 P.3d 748 (2003) (internal citations omitted). "[I]t is critical that our criminal law not be diluted by a standard of proof that leaves the public to wonder whether innocent persons are being condemned." *Id.*

Here, the State failed to prove that giving her first name to Officer Padgett and Deputy English, in conjunction with having previously provided her full name and other identifying information to the county during email and written correspondence regarding the property in question and alleged code violations, constituted a willful refusal to provide information regarding her identity. This is supplemented by showing that Officer Padgett clearly knew Ms. Hansen's identify when he asked on April 20, 2015 if she was "Bobbie."

The Lewis County ordinances under which Ms. Hansen was convicted generally has the same language in each section. The Code provides:

“Upon request of the authorized official, the person alleged [sic] or apparently in violation of these regulations shall provide information identifying themselves.”

LCC 1.20.040(4)(b).

“Upon request of the authorized representative of the department, the person allegedly or apparently in violation of these regulations shall provide information identifying themselves.”

LCC 8.45.130(4)(a).

“Upon request of the building official, the person alleged [sic] or apparently in violation of this ordinance shall provide information identifying themselves.”

LCC 15.05.110(b)(1)(c). Appendix A.

The terms “information,” and “information identifying” are not defined in the Lewis County Code. In the absence of evidence from which a rational trier of fact could find beyond a reasonable doubt that Ms. Hansen committed the offense for which he was convicted in count 1, the judgment may not stand. *State v. Spruell*, 57 Wn. App. 383, 389, 788 P.2d 21 (1990). The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution prohibits a second prosecution for the same offense after a

reversal for lack of sufficient evidence. *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (citing *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969)). The appropriate remedy for the error in this case is dismissal of the conviction based upon the State's failure to prove Ms. Hansen willfully failed to provide identifying information to an authorized county representative.

2. THE SECTIONS OF THE LEWIS COUNTY CODE REQUIRING PERSONS ALLEGEDLY IN VIOLATION OF SECTIONS OF THE CODE TO PROVIDE INFORMATION IDENTIFYING THEMSELVES ARE UNCONSTITUTIONALLY VAGUE.

Under the void-for-vagueness doctrine, a criminal statute must define the criminal offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983). Due process principles command that adequate notice be afforded to the public of what conduct is permitted and what is proscribed. *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S. Ct. 618, 83 L. Ed. 888 (1939). Thus, a statute that is so unclear in its terms that "men of common intelligence must necessarily guess at its meaning and differ as to its application" violates the notice requirement

of due process. *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926).

Here, the State alleged in its second amended information that Hansen violated Lewis County Code §§ 1.20.040(4)(b)-(c), 8.45.130(4)(a), and 15.05.110(b)(1)(b)-(c) because she:

[w]as lawfully requested to provide information identifying herself or himself by an authorized official, and did willfully refused to provide that information.

CP 11.

LCC 1.20.040(4), which pertains building, zoning, environment health, provides in relevant part:

(b) Upon request of the authorized official, the person alleged [sic] or apparently in violation of this chapter shall provide information identifying themselves.

(c) Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

LCC 8.45.130(4)(a), which pertains to solid waste regulation, provides in relevant part:

(4) Violations and Penalties - Persons Requiring a Permit. The requirements in this section apply to all persons which are required to obtain a permit under these regulations, or rules and regulations adopted under them.

(a) Violations - Investigations - Evidence. An authorized representative of the department may investigate alleged or apparent violations of these regulations. Upon request of the authorized representative of the department, the person allegedly or apparently

in violation of these regulations shall provide information identifying themselves. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

LCC 15.05.110(b)(1)(c), which pertains to building codes, provides in relevant part:

(1) Violations, Investigations, Evidence.

a. The building official may investigate alleged or apparent violations of the provisions of this chapter, or the provisions of the State Building Codes adopted by reference by this chapter. In the performance of that investigation, the building official may enter upon any land and make examinations and surveys, provided that such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof.

b. Upon request of the building official, the person alleged [sic] or apparently in violation of this ordinance shall provide information identifying themselves.

c. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

a. A statute is unconstitutionally vague if it does not provide adequate notice of what conduct is proscribed or allows for arbitrary enforcement.

The constitutionality of a statute is reviewed de novo. *State v. Stevenson*, 128 Wn.App. 179, 187, 114 P.3d 699 (2005). An appellant who asserts a vagueness challenge bears the burden of proving the statute's unconstitutionality beyond a reasonable doubt. *id.*

A vague statute violates due process. *State v. Stevenson*, 128 Wn. App. 179, 188, 114 P.3d 699 (2005). The Fourteenth Amendment and article I, section three of the state Constitution protect citizens from impermissibly vague penal statutes. *City of Sumner v. Walsh*, 148 Wn.2d 490, 499, 61 P.3d 111 (2003). Due process requires that individuals (1) receive adequate notice of what conduct is proscribed and (2) are protected from arbitrary enforcement. U.S. Const. amend. XIV; *State v. Moultrie*, 143 Wn. App. 387, 396, 177 P.3d 776 (2008).

The due process vagueness doctrine serves two important purposes: first to provide citizens with fair warning of what conduct they must avoid; and second, to protect them against arbitrary enforcement or discriminatory enforcement of the statute by providing ascertainable standards of guilt. *State v. Halstien*, 122 Wn.2d 109, 116-17, 857 P.2d 270 (1993); *Stevenson*, at 188.

To avoid unconstitutional vagueness, a statute must meet two requirements and is unconstitutional if either requirement is not satisfied. *Halstien* at 117-18. Under the first ground, "a statute meets constitutional requirements '[i]f persons of ordinary intelligence can understand what the ordinance proscribes, notwithstanding some possible areas of

disagreement.”” *State v. Watson*, 160 Wn.2d 1, 7, 154 P.3d 909 (2007) (quoting *City of Spokane v. Douglass*, 115 Wn.2d 171, 179, 795 P.2d 693 (1990)). Under the second ground, a statute is unconstitutionally vague if it " 'contain[s] no standards and allow[s] police officers, judge, and jury to subjectively decide what conduct the statute proscribes or what conduct will comply with a statute in any given case.' " *Douglass*, 115 Wn.2d at 181 (quoting *State v. Maciolek*, 101 Wn.2d 259, 267, 676 P.2d 996 (1984)). Ordinary people must be able to "understand what is and is not allowed." *State v. Valencia*, 169 Wn.2d 782, 791, 785, 239 P.3d 1059 (2010).

A statute that does not comport with these requirements is unconstitutionally vague. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983). Courts are "especially cautious in the interpretation of vague statutes when First Amendment interests are implicated." *Bellevue v. Loranq*, 140 Wn.2d 19, 31, 992 P.2d 496 (2000); accord *Kolender*, 461 U.S. at 358.

b. The ordinances contained in the Lewis County Code prohibiting willful refusal to provide identifying information to county officials does not provide adequate notice of what conduct is proscribed and allows for arbitrary enforcement.

"Identification" statutes or ordinances like the ones at issue here are notoriously vague. In *Kolender*, for example, the U.S. Supreme Court held

a California statute requiring certain individuals to provide a "credible and reliable identification" to police officers was void for vagueness. *Kolender*, 461 U.S. at 353-54.

In *Kolender*, of particular concern to the U.S. Supreme Court was the possibility for the challenged statute, which required individuals to provide "credible and reliable" identification to police upon request, to potentially suppress First Amendment activity and the constitutional right to freedom of movement. 461 U.S. at 358. As written, the statute "vests virtually complete discretion in the hands of the police" to determine whether the statute has been broken. *Id.* As a result of this near-absolute discretion afforded to law enforcement, the statute necessarily placed the responding officer in the position of making law in the course of his patrol. *Id.* at 360. Consequently, the U.S. Supreme Court held that the statute was unconstitutionally void for vagueness on its face "because it encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute." *Id.* at 361.

In *State v. White*, our Supreme Court struck down the then- existing "stop and identify" statute as unconstitutionally vague. *State v. White*, 97 Wn.2d 92, 99, 640 P.2d 1061 (1982). The statute in question made it a

misdemeanor to "obstruct a public servant" by failing, "without lawful excuse", to provide true information "lawfully required" of an individual by a "public servant". *Id.* at 95 (citing RCW 9A.76.020(1) and (2) (1982)). The Court noted, "The problems with the statute before us are obvious." *Id.* at 99. It explained that a determination of what information was "lawfully required" was subjective and that the term "lawful excuse" was "nowhere defined." *Id.* at 100. The Court continued, "Beyond these difficulties, the RCW Title 9A definition of "public servant" is entirely too broad and encompasses nearly any person who is employed by government." *Id.* at 100.

Here, the defense brought a motion to suppress the methamphetamine and on the basis that the three challenged Lewis County ordinances are vague as it applied to Ms. Hansen. CP 75-82. The State argued, *inter alia*, that *Hiibel v. Sixth Judicial District*, 542 U.S. 177, 181-82, 124 S.Ct. 2451, 159 L.Ed2d 292 (2004), was controlling authority and that "identifying information" means that unless a full name is given, that is not enough to identify person, and that merely giving the name "Bobbie" is not enough to identify the person. RP (1/8/16) at 98. In its conclusions of law following the hearing, the trial court noted that the provisions in the

Lewis County Code “are no broader than that allowed by *Hiibel*, and therefore the challenged ordinances were constitutionally applied. CrR 3.6 Conclusion of Law 2.8; CP 42-48. The court denied the motion to suppress, found that the challenged sections of the Lewis County Code are constitutional, and stated that *Hiibel* is applicable. RP (1/6/16) at 111.

The facts of this case illustrate the ambiguity inherent in the undefined term “provide information identifying themselves” which in turn renders the means of committing “willful refusal to provide information identifying a person” unconstitutionally vague as applied to Ms. Hansen. Here, the challenged ordinances require persons allegedly or apparently in violation of relevant code to provide “information identifying themselves,” and that a “[w]ilful refusal to provide information identifying a person as required” constitutes a misdemeanor. The ordinances are unconstitutionally vague because it does not provide sufficient notice of what is meant by “identifying information.” Here, Ms. Hansen provided her first name to Officer Padgett and Dep. English; it was reasonable to believe that by giving her first name, in conjunction with her previous contact with the county code enforcement officials, was sufficient to permit a county official to determine through records her full name. Here, providing a first name could be

deemed by a person of ordinary intelligence enough information to comply with the ordinances, given the full facts of the case. Where, as here, "persons of common intelligence must necessarily guess at its meaning and differ as to its applicability," a statute is impermissibly vague. *Douglass*, 115 Wn.2d at 178.

On its face, the statute requires subjective interpretation of the enforcing official as to whether or not the amount of information is sufficient to identify the person. This ambiguity invites arbitrary enforcement and subjective decision-making. The ambiguity permitted the State to charge, and the court to convict, Ms. Hansen of willfully refusing to provide identifying information, despite having provided sufficient information to county officials to permit an accurate identification.

Second, the ordinances do not provide standards and allow police or fact-finders to subjectively decide what conduct the statute proscribes or what conduct will comply with a statute. Here, the ordinances left the officials with little or no guidance as to what level of cooperation was necessary to comply with the ordinances. Ms. Hanson gave her first name and other identifying information to Officer Padgett, and she had been in email contact with the officer's Lewis County office prior to the contact on

April 20. A county official could determine that by providing her first name, in conjunction with her emails correspondence with the county regarding the land and the allegation of code violations, was sufficient information by which she could be identified and therefore could easily be considered to be a sufficient level of cooperation. However, the opportunity for mischief arises because the statute is impermissibly vague in that it merely says “identifying information,” which could include anything from a social security number, email address, a Facebook homepage address, or in this case, a first name and acknowledgement that she is on the property.

The statute is unconstitutionally vague and therefore it is void. Accordingly, Ms. Hansen’s conviction in count 2 must be reversed. *Walsh*, 148 Wn.2d at 502.

The State relied on *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 191, 124 S. Ct. 2451, 2461, 159 L. Ed. 2d 292 (2004) to support its argument that the LCC provisions are constitutional as applied. *Hiibel*, however is inapposite to Ms. Hansen’s case. *Hiibel* concerns the appellant’s Fifth Amendment privilege against self-incarceration, a claim not raised in Ms. Hansen’s constitutional challenge. In that case, *Hiibel* was convicted of obstruction for refusing to provide identification and argued his conviction

violated the Fifth Amendment privilege against coerced self-incrimination. *Id.* at 180-82, 189. The Court rejected this argument because there was no way Hiibel's name could "furnish a link in the chain of evidence needed to prosecute' him." *Id.* at 190 (quoting *Hoffman v. United States*, 341 U.S. 479, 486, 71 S. Ct. 814, 95 L. Ed. 1118 (1951)). The court also concluded a person's name was unlikely to be incriminating because it is insignificant. *Hiibel*, 542 U.S. at 191. Thus, under the facts of *Hiibel*, the Court found no Fifth Amendment violation. *Id.* at 190-91.

Here, the trial court concluded that the Lewis County Code provision is "no broader than that allowed by *Hiibel*." CrR 3.6 Conclusion of Law 2.8. The court's analysis, however, completely overlooks the fact that *Hiibel* was decided on a challenge to the appellant's Fifth Amendment right against self-incrimination, rather than Ms. Hansen's contention that the ordinances are void due to vagueness. Interestingly, *Hiibel* nevertheless leaves open a challenge to "self-identification" statutes and ordinances; the *Hiibel* Court strongly suggested that, under some circumstances, a request for identification could elicit an incriminating statement: "a case may arise where there is a substantial allegation that furnishing identity at the time of a stop would have given the police a link in the chain of evidence needed to

convict the individual." *Id.* at 191.

Here, the ordinances provide no guidance as to the amount of information must be provided to a county official. The ordinances support the contention that a first name is adequate information for an identification, particularly when the officials apparently knew her identification by addressing her as "Bobbie" and where the appellant had emailed the county officials regarding the specific allegation of code violations. The ordinances, as written, leave open the possibility of arbitrary action by law enforcement if an agency is not satisfied with the amount or type of information provided, which is what happened in the instant case. The code compliance officer was not satisfied with the level of cooperation he received; this is precisely the type of arbitrary and selective enforcement generated by an unconstitutionally vague statute or ordinance.

3. **THE ARREST WAS PREDICATED ON AN
UNCONSTITUTIONAL ORDINANCE, AND
THEREFORE THE SUBSEQUENT SEARCH WAS NOT
INCIDENT TO A VALID ARREST**

Warrantless searches are also per se unreasonable, although an exception exists for a warrantless search incident to arrest. *State v. White*, 135 Wn.2d 761, 769, 958 P.2d 982 (1998). The search incident to arrest exception to the warrant requirement is also narrower under article I, § 7

than under the Fourth Amendment. *State v. O'Neill*, 148 Wn.2d at 584. Pursuant to article I, § 7, a lawful custodial arrest is a constitutionally required prerequisite to any search incident to arrest. *O'Neill*, 148 Wn.2d at 585; *State v. Parker*, 139 Wn.2d 486, 496, 987 P.2d 73 (1999). "It is the fact of arrest itself that provides the "authority of law" to search, therefore making the search permissible under article I, § 7." *O'Neill*, at 585. Here, the arrest warrant was issued pursuant to alleged violation of ordinances which are unconstitutional, as argued in section 2, *supra*.

Consequently, the search incident to arrest was also invalid. Because the arrest was unconstitutional, the methamphetamine discovered while Officer English was in the process of placing Ms. Hansen under arrest should be suppressed as a "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963); *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986).

Ms. Hansen did not violate the county ordinances at issue in this case, and if she did, the challenged parts of the LCC are unconstitutionally vague. This Court should accordingly reverse her convictions and dismiss the charge in count 2 with prejudice, and also vacate the conviction in count 1 because the arrest and resulting discovery of methamphetamine was based

on a warrant issued without probable cause and because the underlying ordinances are unconstitutionally vague.

F. CONCLUSION

This Court should hold the three sections of the Lewis County Code at issue are is unconstitutionally vague, and that the warrant issued for failure to appear for an alleged violation of the code was unlawfully issued. In the alternative, the State failed to prove that Ms. Hansen willfully failed to provide identifying information to a code enforcement officer.

Ms. Hansen respectfully requests that this Court reverse her convictions and dismiss the charges with prejudice.

DATED: August 31, 2016.

Respectfully submitted,

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read "Peter B. Tiller", is written over a horizontal line.

PETER B. TILLER-WSBA 20835

Of Attorneys for Bobbie Hansen

CERTIFICATE OF SERVICE

The undersigned certifies that on August 31, 2016, that this Appellant's Opening Brief was sent by the JIS link to Mr. David Ponzoh, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and a copy was emailed to Ms. Sara Beigh, Deputy Prosecuting Attorney, Lewis County Prosecutor's Office at appeals@lewiscountywa.gov copies were mailed by U.S. mail, postage prepaid, to appellant, Ms. Bobbie Hansen, PO Box 121, Cinebar, WA 98533 true and correct copies of this Opening Brief of Appellant.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on August 31, 2016.

A handwritten signature in black ink, appearing to read 'P. B. Tiller', written over a horizontal line.

PETER B. TILLER WSBA 20835

Appendix A

Lewis County Code

1.20.040 Civil enforcement.

(1) This chapter provides the procedure for enforcing and investigating suspected violations of county ordinances. The procedure created by this chapter is civil in nature and subject to the Infraction Rules for Limited Jurisdiction Courts.

(2) Applicability.

(a) This title shall apply to the enforcement of Lewis County ordinances and codes, including those related to building, zoning, environmental health and safety, and quality of life, which specifically reference this chapter.

(b) Violations of the applicable code shall be corrected under the provisions of this title, in coordination with existing ordinance and code provisions.

(3) Enforcement. Only an authorized official may enforce the provisions of this title. For purposes of this title, an authorized official is defined as any one of the following:

(a) The Lewis County sheriff and his or her authorized representatives;

(b) The Lewis County health officer, the administrative officer of the board of health, and their authorized representatives;

(c) The director of the Lewis County department of community development and his or her authorized representatives;

(d) The Lewis County prosecuting attorney may, in addition to any enforcement provisions hereunder, have authority to institute any legal proceedings necessary to enforce this title; and

(e) The Lewis County board of commissioners and the Lewis County board of health may designate other persons to administer the provisions of this title.

(4) Violations - Investigations - Evidence.

(a) An authorized official may investigate alleged or apparent violations of the ordinances and codes referenced above in subsection (2)(a) of this section. In the performance of that investigation, an authorized official may enter upon any land and make examinations and surveys; provided, that such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof.

(b) Upon request of the authorized official, the person alleged or apparently in violation of this chapter shall provide information identifying themselves.

(c) Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

(5) Notice of Infraction - Service. Whenever an authorized official determines that a violation has occurred, or is occurring, he/she may pursue reasonable attempts to secure voluntary corrections, failing which he/she may issue a notice of infraction. An authorized official may issue a notice of infraction if either the provisions of the codes referenced in subsection (2) of this section have been violated in the officer's presence, or if the official has probable cause to believe, and does believe, that a referenced code provision has been violated. A notice of infraction maybe be served either by:

(a) The authorized official serving the notice of infraction on the person named in the notice of infraction at the time of issuance; or

(b) The authorized official filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his/her address.

(6) Notice of Infraction - Forum - Contents. The notice of infraction shall contain the following statements:

(a) The authorized official has determined that the infraction has been committed by the person named in the notice and that the determination is final unless contested, as provided in this chapter;

(b) The infraction is a noncriminal offense, not punishable by imprisonment;

(c) The specific violation which the person is alleged to have committed and the accompanying statutory citation, the date and place of the infraction, the date the notice was issued, and the authorized official;

(d) The monetary penalties established for each infraction;

(e) The options and corresponding procedures provided in this chapter for responding to the notice;

(f) That at any hearing to contest the determination that the county has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized official who issued and served the notice of infraction;

(g) That at a hearing for mitigating the infraction, the person will only have the opportunity to explain the circumstances of the infraction and may not contest that the person committed an infraction;

(h) A promise requiring the person's signature that the person will respond to the notice of infraction in one of the ways provided in this chapter and within the time required;

(i) That refusal to sign and respond to the infraction is a misdemeanor and may be punished by a fine and/or imprisonment in jail.

(j) That each day the violation continues may be considered a separate violation;

(k) The failure to mail a response, within 15 days of the date of the notice, or 18 days from the date mailed if service is by mail, forfeits the person's right to contest the infraction at a hearing; and

(l) The name, address, and telephone number of the district court clerk.

(7) Notice of Infraction - Filing - Hearing in District Court. The authorized official shall file a notice of infraction in district court within 48 hours of issuance, excluding Saturdays, Sundays, and holidays. Lewis County district court shall have jurisdiction to hear and determine these matters.

(8) Notice of Infraction - Determination Infraction Committed. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction. A notice shall not be insufficient for failure to give a definite statement of the essential facts of an infraction or any other defects that do not prejudice the substantial rights of the defendant.

(9) Notice of Infraction - Response - Requesting a Hearing - Failure to Respond or Appear - Order to Set Aside.

(a) A person who receives a notice of infraction shall respond to the notice, either by mail or in person, within 15 days of the date the notice was served, or 18 days from date mailed if service is by mail. Mailed responses must be postmarked on or before midnight of the fifteenth day. The person named in the notice of infraction may respond to the infraction by:

(i) Paying the appropriate monetary penalty, completing the appropriate portion of the notice of infraction and submitting it to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When such a response is received, the court shall enter and record a judgment that the person committed the infraction. A record of the response order shall be furnished to the appropriate department(s).

(ii) Completing the portion of the notice of civil infraction requesting a mitigation hearing and submitting it to the district court. Within 14 days,

the court shall notify the person in writing of the time, place, and date of the hearing. That date shall not be earlier than 14 days nor more than 120 days from the date of the notice of the hearing, except by agreement.

(iii) Completing the portion of the notice of infraction requesting a hearing to contest the infraction and submitting it to the district court. Within 14 days, the court shall notify the person in writing of the time, place, and date of the hearing. That date shall not be earlier than 14 days nor more than 120 days from the date of the notice of the hearing, except by agreement. A notice issued by the district court shall also advise the person requesting a hearing of the person's right to subpoena witnesses and that failure to either appear at a hearing or pay the penalty may be a crime for which the person may be arrested and may prevent the person from obtaining any county permits.

(b) If a person served with an infraction:

(i) Fails to respond to the notice of civil infraction as provided in subsection (9)(a) of this section; or

(ii) Fails to appear at a hearing requested pursuant to either subsection (9)(a)(ii) or (iii) of this section; then

The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction, and may notify the prosecuting attorney of the failure to respond to the notice of civil infraction or to appear at a requested hearing.

(10) Notice of Failure to Sign, Appear, or Satisfy Penalty.

(a) A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.

(b) Any person willfully violating his/her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction; however, appearance of counsel shall satisfy the person's obligation to respond.

(c) A person who willfully fails to pay a monetary penalty as required by a court under this chapter may be found in civil contempt of court after notice and hearing.

(11) Representation by Attorney.

(a) A person subject to proceedings under this chapter may appear or be represented by counsel.

(b) The prosecuting attorney representing the county may, but need not, appear in any proceedings under this chapter, notwithstanding any statute or court rule to the contrary.

(12) Infraction Hearing Procedure - Burden of Proof - Order Appeal.

(a) A hearing held to contest the determination that an infraction has been committed shall be without a jury.

(b) The court may consider the notice of infraction and any sworn statements submitted by the authorized representative who issued and served the notice in lieu of his/her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized official who has issued and served the notice, and has the right to present evidence and examine witnesses present in court. Upon demand, the county shall provide the person with a list of witnesses and the authorized official's sworn statement. Subpoenas and discovery demands shall conform to Rule 3.1(a) and (b) of the Infraction Rules of Courts of Limited Jurisdiction, as hereafter amended.

(c) The burden of proof is on the county to establish the commission of the infraction by a preponderance of evidence.

(d) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that a civil infraction has been committed, an appropriate order shall be entered in the court's records.

(e) An appeal from the court's determination to order shall be to the superior court in the manner provided by the Rules for Appeal of Decisions of Court of Limited Jurisdiction.

(13) Explanation of Mitigating Circumstances.

(a) A hearing for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may present witnesses, but may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances. A person may be represented by a lawyer at a mitigation hearing.

(b) After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's record.

(c) There shall be no appeal from the court's determination or order under this section.

(14) Monetary Penalties - Restitution.

(a) A person found to have committed a civil infraction shall be assessed a monetary penalty. All violations of this title shall be denominated Class 2 civil infractions under Chapter 7.80 RCW, unless otherwise specified in the particular Lewis County Code chapter violated. The maximum penalty and default amount for a Class 2 civil infraction shall be \$125.00, not including statutory assessments.

(b) A court shall assess a Class 1 monetary penalty under Chapter 7.80 RCW for the second and each succeeding violation of the same ordinance that a person commits within 12 months. The maximum penalty and default amount for a Class 1 civil infraction shall be \$250.00, not including statutory assessments.

(c) Whenever a court imposes a monetary penalty under this section it is immediately payable. If the person is unable to pay at the time, the court may grant an extension of the period of time in which the penalty may be

paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting attorney of the failure to pay. The court shall notify the appropriate county department(s) of the failure to pay the penalty, and the department(s) shall not issue the person any future permits for any work until the monetary penalty has been paid.

(d) The court may also impose attorney fees and/or order a person found to have committed a civil infraction to make restitution, including the county's enforcement costs. If restitution is ordered, the court shall set a minimum monthly payment that the person is required to make towards restitution. The court should take into consideration the total amount of the restitution owed, the offender's future ability to pay, as well as any assets that the offender may have.

(15) Court Order Is Civil - Modification of Penalty.

(a) An order entered pursuant to this section is civil in nature.

(b) The court may waive, reduce, or suspend the monetary penalty prescribed for the civil infraction.

(16) Costs and Attorney's Fees. Each party in a civil infraction case is responsible for court costs incurred by that party, but the court may assess witness fees against a nonprevailing respondent. Attorney fees may be awarded to either party in a civil infraction case.

(17) Interpretation. This civil enforcement section shall be interpreted consistently with the Infraction Rules for Courts of Limited Jurisdiction and Chapter 7.80 RCW. The Infraction Rules for Courts of Limited Jurisdiction shall control all procedural matters not covered by this chapter. All other matters shall be controlled by Chapter 7.80 RCW.

(18) Lewis County officials, employees, agents and representatives investigating suspected violations of or enforcing other ordinances and codes pursuant to this civil enforcement section shall be exempt from the provisions of Chapter 1.25 LCC. [Ord. 1192 §8, 2006; Ord. 1180 §2, 2002; Ord. 1157, 1998]

8.45.130 Enforcement.

(1) Other Laws, Regulations and Agency Requirements. All solid waste management shall be subject to the authority of other laws, regulations or other agency requirements in addition to these rules and regulations. Nothing in these rules and regulations is intended to abridge or alter the rights of action by the state or by persons which exist in equity, common law or other statutes to abate pollution or to abate a nuisance. Chapter 173-350 WAC, the minimum functional standards for solid waste handling, or as amended, is hereby adopted by reference. If a conflict exists in the interpretation of Chapter 173-350 WAC and these regulations, the more stringent shall apply.

(2) Enforcement Authority. The health officer or his/her designee shall have the authority to enforce the provisions of these regulations equally on all persons. The health officer or his/her designee is also authorized to adopt rules consistent with the provisions of these rules and regulations for the purpose of enforcing and carrying out its provisions.

(3) Right of Entry.

(a) Whenever necessary to make an inspection of a nonpermitted site to enforce or determine compliance with the provisions of these regulations, and other relevant laws and regulations, or whenever the health officer or his/her designee has cause to believe that a violation of these regulations has been or is being committed by someone not holding a permit issued under this chapter, the health officer or his/her designee or his/her duly authorized inspector is exempt from the provisions of Chapter 1.25 LCC and may enter any building, structure, property or portion thereof at reasonable times to inspect the same, but only according to law.

(b) With respect to permit based inspections, the health officer, or designee, or duly authorized inspector must be given access to the inspection site, in accordance with the conditions of the permit. If such building, structure, property or portion thereof is occupied, the inspector shall present identification credentials, state the reason for the inspection, and request entry.

(4) Violations and Penalties - Persons Requiring a Permit. The requirements in this section apply to all persons which are required to obtain a permit under these regulations, or rules and regulations adopted under them.

(a) Violations - Investigations - Evidence. An authorized representative of the department may investigate alleged or apparent violations of these regulations. Upon request of the authorized representative of the department, the person allegedly or apparently in violation of these regulations shall provide information identifying themselves. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

(b) Notice and Order to Correct Violation.

(i) Issuance. Whenever the health officer determines that a violation has occurred or is occurring, he/she shall pursue reasonable attempts to secure voluntary correction, failing which he/she may issue to the property owner or to any person causing, allowing or participating in the violation a written notice and order to correct violation and/or to immediately cease such work or activity until authorized by the health officer or his/her designee to proceed.

(ii) Content and Process.

(A) The health officer or his/her designee shall issue such notice and order in writing to the person(s) creating, causing, participating in or allowing the violation.

(B) The notice of violation and order shall contain the following:

(I) The name and mailing address of the property owner or other person(s) to whom the notice of violation is directed by the health officer;

(II) A street address or legal description adequate for the identification of the activity, property or portion thereof upon which the violation is based;

(III) A description of the violation and a reference to the nature of the regulation violated which is sufficient to reasonably apprise the recipient of the nature of the violation;

(IV) A statement of the action required or action to be terminated to correct the violation and a time or date by which the corrective action must be completed so as to avoid citation, legal actions for injunction and abatement, or other enforcement actions;

(V) A statement of the possible penalties that may be assessed against the person(s) for each violation while the violation continues;

(VI) A statement that the violation may also constitute a criminal violation for each and every day, or portion of a day, for which the violation continues; and

(VII) A statement describing the appeals process under this section and Chapter 2.25 LCC and the time limitations for filing appeal.

(C) The notice shall be served upon the person(s) to whom it is directed, either personally or by mailing a copy of the notice by certified mail, postage prepaid and return receipt requested, to such persons at their last known mailing address. Proof of service shall be made at the time of service by written declaration under penalty of perjury executed by the party effecting such service, and declaring the date of service and, in the case of personal service, the time of service, and the manner by which service was made.

(iii) Supplemental Order to Correct Violation. The health officer may at any time add to, rescind in part, or otherwise modify a notice and order to correct violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations issued under this chapter.

(iv) Enforcement of Final Order. If, after any order duly issued by the health officer or his/her designee has become final, the person to whom such order is directed fails, neglects, or refuses to obey such order, the health officer or his/her designee may:

(A) Cause such person to be prosecuted under these regulations; and/or

(B) Institute any appropriate action to impose and collect a civil penalty provided by law; and/or

(C) Abate the health violation; and/or

(D) Pursue any other appropriate remedy at law or equity;

(E) Issue a civil infraction under LCC 1.20.040.

(v) Written Assurance of Discontinuance. The health officer or his/her designee may accept a written assurance of discontinuance of any act in violation of this regulation from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this chapter.

(c) Violations - Misdemeanor Penalty. Any person who:

(i) Fails, neglects, or refuses to obey a final order of the health officer or his/her designee to correct a violation; or

(ii) Fails, neglects, or refuses to comply with a written assurance of discontinuance; or

(iii) Operates a solid waste storage, treatment, processing, handling or disposal site or facility without a permit; or

(iv) Operates a solid waste storage, treatment, processing, handling or disposal site or facility after a permit has been suspended; or

(v) Dumps or deposits solid waste without a permit in violation of this chapter, is guilty of a misdemeanor, and, upon conviction, may be punished by imprisonment in the county jail for maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000, or by both such imprisonment and fine. The court may also impose restitution.

(d) Abatement Orders. In addition to or as an alternative to any other judicial or administrative remedy provided in this chapter or by law or other rules and regulations, the health officer or his/her designee may order violation of this chapter to be abated. The effect of the abatement order shall be to require work to be done to correct the violation within a reasonable time period. If the required corrective work is not commenced or completed within the time specified, the health officer or his/her designee will proceed to abate the violation and cause the work to be done. The abatement order shall be posted upon the property where the violation is occurring, and shall be served upon the owner of the property either personally or by certified mail, return receipt requested, at the owner's last known address. The property owner is responsible for the costs of all corrective action, whether done by the owner or the Department of Ecology or the health officer. The health officer shall have the right to collect the amount expended for abatement through appropriate legal action.

(e) Other Legal or Equitable Relief. Notwithstanding the existence or use of any other remedy, the health officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions which constitute or will constitute a violation of this chapter, or rules and regulations adopted under them.

(f) Permit Suspension and Appeal.

(i) Suspension of Permits.

(A) The health officer or his/her designee may suspend any permit issued under these regulations for:

(I) Failure of the holder to comply with the requirements of this chapter or any permit issued pursuant to this chapter; or

(II) Failure to comply with any notice and order issued pursuant to this chapter related to the permitted activity; or

(III) Interference with the health officer or his/her designee in the performance of his/her duties; or

(IV) Discovery by the health officer or his/her designee that a permit was issued in error or on the basis of incorrect information supplied to him/her; or

(V) The dishonor of any check or draft used by the permit holder to pay any fees associated with the permit.

(B) Permit suspension shall be carried out according to the notice and order provisions specified in this subsection (4). The suspension notice shall inform the holder or operator that, upon request, the operator or holder of the permit may receive a hearing on the suspension in front of the hearing examiner within 30 days of the request. The notice shall be sent to all interested parties, including the Department of Ecology. The suspension shall be effective upon service of the suspension notice and order upon the holder or operator. Requests for hearings shall comply with the rules in Chapter 2.25 LCC.

(C) Notwithstanding any other provision of this regulation, whenever the health officer finds that a violation of this regulation has created or is creating an unsanitary, dangerous or other condition which, in his/her judgment, constitutes an immediate and irreparable hazard, he/she may, without service of a written notice and order, suspend and terminate operations under the permit immediately.

(ii) Appeals.

(A) Whenever the health officer suspends a permit for a solid waste handling facility or orders the permit holder to terminate action, the permit holder may request a hearing before the county hearing examiner to appeal the suspension. The permit holder must request the hearing in writing within 10 days pursuant to Chapter 2.25 LCC. A hearing will be granted within 30 days.

(B) Any party aggrieved by the hearing examiner's determination may appeal to the State Pollution Control Hearings Board by filing with the Board a notice of appeal within 30 days after receipt of notice of the determination of the hearing examiner.

(C) If the health officer suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the suspended permit shall not be effective until the completion of the appeal process under this section, unless the health officer declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment.

(D) Procedures for appealing beneficial use exemption determinations are contained in WAC 173-350-200.

(E) Enforcement of any notice and order of the health officer or his/her designee pursuant to these regulations shall be stayed during the pendency of any appeal under these regulations, except when the health officer determines that the violation will cause immediate and irreparable harm and so states in the notice and order issued. [Ord. 1250, 2013]
8.45.140 Solid waste facilities subject to remedial action measures.

When the owner or operator of a solid waste facility is subject to remedial measures in compliance with Chapter 173-340 WAC, the Model Toxics Control Act, the roles of the jurisdictional health department and the Department of Ecology shall be as follows:

(1) The jurisdictional health department:

(a) May participate in all negotiations, meetings, and correspondence between the owner and operator and the department in implementing the model toxics control action;

(b) May comment upon and participate in all decisions made by the department in assessing, choosing, and implementing a remedial action program;

(c) Shall require the owner or operator to continue closure and post-closure activities as appropriate under this chapter, after remedial action measures are completed; and

(d) Shall continue to regulate all solid waste facilities during construction, operation, closure and post-closure, that are not directly impacted by Chapter 173-340 WAC.

(2) The department shall carry out all the responsibilities assigned to it by Chapter 70.105D RCW, Hazardous waste cleanup -Model Toxics Control Act. [Ord. 1250, 2013]

15.05.110 Penalties.

Section 109.3 of the International Fire Code, Section 113 of the International Building Code, Section 113R of the International Residential Code, Section 108 of the International Mechanical Code, and Section 102.3 of the 2006 Uniform Plumbing Code Section are hereby amended to read as follows:

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the county of Lewis, or cause the same to be done, contrary to or in violation of any of the provisions of this chapter. Violations of this chapter shall constitute a civil violation subject to monetary penalty, as below stated, under RCW 36.32.120(7), and each such person shall be deemed punishable for a separate violation for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted.

(a) Violations as a Public Nuisance. The following are hereby declared to be a public nuisance:

- (1) Any building or structure hereafter set up, erected, built, moved, maintained, constructed, enlarged, altered, repaired, improved, removed, converted, demolished, equipped, used, occupied, or maintained contrary to the provisions of this chapter;
- (2) Any grading, excavating, or filling operation, contrary to provisions of Chapter 18 of the International Building Code;
- (3) Any work done or action taken or product thereof which is contrary to this chapter;
- (4) Unsafe structures or equipment as defined in Section 115 of the International Building Code.

For purposes of abatement actions, any person, firm or corporation violating the provisions of this chapter shall be liable for all costs of such proceedings, including reasonable attorney's fees and expense of

abatement. The building official shall take steps to abate public nuisances as defined herein. The prosecuting attorney may commence an action or actions, proceeding or proceedings for the abatement, removal or enjoinder of public nuisances as defined herein. The power hereby granted to abate a public nuisance shall be construed broadly.

(b) Civil Penalty. In addition to, or as an alternative to, any other penalty provided herein or by law, any person, firm, or corporation which violates the provisions of this chapter, or violates the provisions of the State Building Codes adopted by reference by this chapter, shall be subject to citation and civil monetary penalties as follows:

(1) Violations, Investigations, Evidence.

a. The building official may investigate alleged or apparent violations of the provisions of this chapter, or the provisions of the State Building Codes adopted by reference by this chapter. In the performance of that investigation, the building official may enter upon any land and make examinations and surveys, provided that such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof.

b. Upon request of the building official, the person alleged or apparently in violation of this ordinance shall provide information identifying themselves.

c. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

(2) Notice of Infraction Service.

Whenever the building official determines that a violation has occurred, or is occurring, he/she may pursue reasonable attempts to secure voluntary corrections, failing which he/she may issue a notice of infraction. The building official may issue a notice of infraction if the provisions of the ordinance has been violated in the official's presence. A notice of infraction may be served either by:

a. The building official serving the notice of infraction on the person named in the notice of infraction at the time of issuance; or

b. The building official filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his/her address.

(3) Notice of Infraction - Form - Contents. The notice of infraction shall contain the following statements:

a. The building official has determined that the infraction has been committed by the person named in the notice and that the determination is final unless contested, as provided in this ordinance;

b. The infraction is a non-criminal offense, not punishable by imprisonment;

c. The specific violation which the person is alleged to have committed and the accompanying statutory citation, the date and place of the infraction, the date the notice was issued, and the building official;

d. The monetary penalties established for each infraction;

e. The options and corresponding procedures provided in this ordinance for responding to the notice;

f. That at any hearing to contest the determination that the county has the burden of providing by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the building official who issued and served the notice of infraction;

g. That at a hearing for mitigating the infraction, the person will only have the opportunity to explain the circumstances of the infraction and may not contest that the person committed an infraction;

- h. A promise requiring the person's signature that the person will respond to the notice of infraction in one of the ways provided in this chapter and within the time required;
- i. That refusal to sign and respond to the infraction is a misdemeanor and may be punished by a fine and/or imprisonment in jail.
- j. That each day the violation continues, may be considered a separate violation;
- k. The failure to mail a response, within fifteen (15) days of the date of the notice, or eighteen (18) days from the date mailed if service is by mail, forfeits the person's right to contest the infraction at a hearing; and
- l. The name, address, and telephone number of the District Court Clerk.

(4) Notice of Infraction Filing Hearing in District Court. The building official shall file a notice of infraction in District Court within forty-eight (48) hours of issuance, excluding Saturdays, Sundays, and holidays. Lewis County District Court shall have jurisdiction to hear and determine these matters.

(5) Notice of Infraction Determination Infraction Committed. Unless contested in accordance with this ordinance, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction. A notice shall not be insufficient for failure to give a definite statement of the essential facts of an infraction or any other defects that do not prejudice the substantial rights of the defendant.

(6) Notice of Infraction - Response - Requesting a Hearing - Failure to Respond or Appear - Order to Set Aside.

a. A person who receives a notice of infraction shall respond to the notice, either by mail or in person, within fifteen (15) days of the date the notice was served, or eighteen (18) days from date mailed if service is by mail. Mailed responses must be postmarked on or before midnight of the fifteenth day. The person named in the notice of infraction may respond to the infraction by:

(i) Paying the appropriate monetary penalty, completing the appropriate portion of the notice of infraction and submitting it to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When such a response is received, the court shall enter and record a judgment that the person committed the infraction. A record of the response order shall be furnished to the appropriate department(s).

(ii) Completing the portion of the notice of civil infraction requesting a mitigation hearing and submitting it to the District Court. Within fourteen (14) days, the court shall notify the person in writing of the time, place, and date of the hearing. That date shall not be earlier than fourteen (14) days, nor more than one hundred and twenty (120) days from the date of the notice of the hearing, except by agreement.

(iii) Completing the portion of the notice of infraction requesting a hearing to contest the infraction and submitting it to the District Court. Within fourteen (14) days, the court shall notify the person in writing of the time, place, and date of the hearing. That date shall not be earlier than fourteen (14) days, nor more than one hundred and twenty (120) days from the date of the notice of the hearing, except by agreement. A notice issued by the District Court shall also advise the person requesting a hearing of the person's right to subpoena witnesses and that failure to either appear at a hearing or pay the penalty may be a crime for which the person may be arrested and may prevent the person from obtaining any County permits.

b. If a person served with an infraction:

(i) Fails to respond to the notice of civil infraction as provided above in subsection (6)(a) of this section; or

(ii) Fails to appear at a hearing requested pursuant to either subsection (6)(a)(ii) or (6)(a)(iii) of this section; then the court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction, and may notify the prosecuting attorney of the failure to respond to the notice of civil infraction or to appear at a requested hearing.

(7) Notice of Failure to Sign, Appear, or Satisfy Penalty.

- a. A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.
- b. Any person willfully violating his/her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction; however, appearance of counsel shall satisfy the person's obligation to respond.
- c. A person who willfully fails to pay a monetary penalty as required by a court under this chapter may be found in civil contempt of court after notice and hearing.

(8) Representation by Attorney.

- a. A person subject to proceedings under this ordinance may appear or be represented by counsel.
- b. The prosecuting attorney representing the County may, but need not, appear in any proceedings under this ordinance, notwithstanding any statute or court rule to the contrary.

(9) Infraction Hearing Procedure - Burden of Proof - Order Appeal.

- a. A hearing held to contest the determination that an infraction has been committed shall be without a jury.
- b. The court may consider the notice of infraction and any sworn statements submitted by the building representative who issued and served the notice in lieu of his/her personal appearance, at the hearing. The person named in the notice may subpoena witnesses, including the building official who has issued and served the notice, and has the right to present evidence and examine witnesses present in court. Upon demand, the County shall provide the person with a list of witnesses and the building official's sworn statement. Subpoenas and discovery demands shall conform to Rule 3.1(a) and (b) of the Infraction Rules of Courts of Limited Jurisdiction, as hereafter amended.

c. The burden of proof is on the County to establish the commission of the infraction by a preponderance of evidence.

d. After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that a civil infraction has been committed, an appropriate order shall be entered in the court's records.

e. An appeal from the court's determination to order shall be to the superior court in the manner provided by the Rules for Appeal of Decisions of Court of Limited Jurisdiction.

(10) Explanation of Mitigating Circumstances.

a. A hearing for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may present witnesses, but may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances. A person may be represented by a lawyer at a mitigation hearing.

b. After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's record.

c. There shall be no appeal from the court's determination or order under this section.

(11) Monetary Penalties - Restitution.

a. A person found to have committed a civil infraction shall be assessed a monetary penalty. All violations of this title shall be denominated Class 2 Civil Infractions under Chapter 7.80 RCW, unless otherwise specified in the particular Lewis County code chapter violated. The maximum penalty and default amount for a Class 2 Civil Infraction shall be \$125.00, not including statutory assessments.

b. A court shall assess a Class 1 monetary penalty under Chapter 7.80 RCW for the second and each succeeding violation of the same ordinance that a person commits within 12 months. The maximum penalty and default amount for a Class I civil infraction shall be (\$250.00), not including statutory assessments.

c. Whenever a court imposes a monetary penalty under this ordinance it is immediately payable. If the person is unable to pay at the time, the court may grant an extension of the period of time in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting attorney of the failure to pay. The court shall notify the appropriate county department(s) of the failure to pay the penalty, and the department(s) shall not issue the person any future permits for any work until the monetary penalty has been paid.

d. The court may also impose attorney fees and/or order a person found to have committed a civil infraction to make restitution, including the county's enforcement costs. If restitution is ordered, the court shall set a minimum monthly payment that the person is required to make towards restitution. The court should take into consideration the total amount of the restitution owed, the offender's future ability to pay, as well as any assets that the offender may have.

(12) Court Order is Civil - Modification of Penalty.

a. An order entered pursuant to this ordinance is civil in nature.

b. The court may waive, reduce, or suspend the monetary penalty prescribed for the civil infraction.

(13) Costs and Attorney's Fees. Each party in a civil infraction case is responsible for court costs incurred by that party, but the court may assess witness fees against a non-prevailing respondent. Attorney fees may be awarded to either party in a civil infraction case.

[Ord. 1187A §2, 2007; Ord. 1187 §2, 2005]

APPENDIX B

Received & Filed
LEWIS COUNTY, WASH
Superior Court

FEB 17 2016

By Kathy A. Brack, Clerk *tw*
Deputy *609*

SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

BOBBIE HANSEN VALENTICH,
A.K.A. BOBBIE HANSEN,

Defendant.

NO. 15-1-00299-1

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND CrR 3.5/3.6 ORDER

After the defense filed a motion to suppress, this matter came on for a CrR 3.5/3.6 hearing to address the admissibility of the defendant's statements and the propriety of a bench warrant issued in this matter. The State was represented by DPA Eric Eisenberg. The Defendant was present and represented by attorney Jacob Clark. The Court heard testimony from three witnesses and the argument of counsel. Having considered the parties' briefing and being otherwise fully advised, the Court adopts the following findings, conclusions, and order:

FINDINGS OF FACT

The Court finds the following facts:

1.1. Lewis County Code Compliance Officer Smokey Padgett is authorized to enforce all of the county codes, including the solid waste, septic, and building codes. A sheriff's deputy is also authorized to enforce the codes.

1.2. On or about April 1, 2015, Padgett approached a property in Lewis County owned by Bobbie Hansen, the defendant. From the roadway, Padgett observed a

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER HOLDING
STATEMENTS ADMISSIBLE
Page 1 of 7

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1 building and a pickup truck containing a large amount of garbage.

2 1.3. On April 20, 2015, Padgett returned to Hansen's property with Lewis County
3 Sheriff's Office Deputy Tim English. The two were driving marked county vehicles. Dep.
4 English was in uniform, and Padgett wore his credential identifying him as a county
5 employee. Both men were on duty and had authority to enforce the solid waste, septic,
6 and building codes at that time.

7 1.4. Padgett observed the same building and the same garbage in the pickup
8 truck. Padgett believed that the building was over one story tall and contained a fireplace,
9 due to its appearance and the presence of a chimney. He thought from the presence of
10 the garbage, an RV, and dogs that someone was living in the building.

11 1.5. Padgett believed that a permit was required to build, own, or occupy the
12 building, which he knew no one had applied for. He also knew that no one had applied
13 for a permit to store garbage on the property. Storing garbage without a permit is a civil
14 infraction under the solid waste code.

15 1.6. Before April 1 of 2015, Padgett had sent a Notice of Violation to Bobbie
16 Hansen and had received a return signed by "B. Hansen." Hansen had sent email and
17 other communication to Padgett's department.

18 1.7. Despite this interaction, as of April 20, 2015 neither Padgett nor Dep. English
19 had ever met Hansen in person. They did not know if "Bobbie" was a woman or a man.
20 Padgett had been unable to find a photo of Bobbie Hansen through "DAPS," a licensing
21 database to which he had access, or "Spillman," a local database of law enforcement
22 contacts. Padgett's access to Spillman was limited. He did not request Dep. English to
23 run Ms. Hansen's information in Spillman.

24 1.8. When they stood on the roadway at Hansen's property on April 20, 2015,
25 Padgett and Dep. English called out for someone to come speak with them. A woman
26 appeared from inside the building. Padgett and Dep. English did not know who the
woman was at the time. They learned later that it had been Hansen.

1.9. As Padgett and Dep. English began to walk up the driveway to speak to the
woman, she yelled at them to get off my property, saying that they had no right to be
there. Padgett and Dep. English retreated to the roadway, off of Hansen's property, while

1 they attempted to speak with Hansen.

2 1.10. Padgett tried to explain that he was a code compliance officer and to speak
3 with Hansen about alleged code violations he observed on the property. Hansen was
4 extremely difficult to communicate with.

5 1.11. Both Padgett and Dep. English, at separate points, asked Hansen to
6 provide her name. Hansen refused to provide this information. She denied being the
7 property owner.

8 1.12. Eventually, Padgett asked if the woman as "Bobbie," and she admitted that
9 her first name was Bobbie.

10 1.13. Padgett informed her that, by the county code, she had to provide identifying
11 information when asked by a code enforcement officer, and again requested her full
12 name. The woman refused. She denied committing any code violations.

13 1.14. By Hansen's own account, her refusal to provide her last name was
14 sarcastic, because she was frustrated by the county contacting her about code violations
15 that she did not believe there were violations.

16 1.15. Padgett did not believe he had enough information to cite Hansen for the
17 civil infractions he had observed at this point. He referred the matter to the Lewis County
18 Prosecutor's Office.

19 1.16. The State charged Hansen as a Jane Doe in Lewis County District Court,
20 alleging that she wilfully failed to provide identifying information as required by three
21 sections of the Lewis County Code—a misdemeanor. After finding probable cause based
22 on an affidavit, the court issued a summons.

23 1.17. On June 1, 2015, Dep. English returned to Hansen's property to serve the
24 summons. He did not locate Hansen there.

25 1.18. In the meantime, Padgett had looked on Facebook and located a Bobbie
26 Hansen whom he recognized, by her picture and references to the location of the
property, as the Bobbie Hansen he and Dep. English had contacted. Padgett obtained a
phone number for Hansen, which he provided to Dep. English.

1.19. Dep. English spoke to Hansen by phone and learned that she was in Yelm.
Dep. English had asked for her address so that he could bring the summons there.

1 Hansen refused. Dep. English arranged to meet Hansen at her property in Lewis County
2 at a specific time, depending on her schedule, two days later to serve her the summons,
3 explaining what the summons was for.

4 1.20. At the time of the arranged meeting, Dep. English responded to Hansen's
5 property as agreed. He waited for thirty minutes; Hansen did not show. Dep. English
6 called and left two more messages for Hansen using the number at which he previously
7 spoke to her. Finally, Dep. English called and left a final message detailing the date, time,
8 and location of Hansen's arraignment in district court.

9 1.21. Hansen testified that she eventually received actual notice of the date, time,
10 and location of the court hearing.

11 1.22. Hansen failed to appear for the arraignment. Previously filed documents
12 set forth probable cause for the failure-to-identify charge. The State informed the court
13 of Dep. English's attempts to serve Hansen, which were described under oath in Dep.
14 English's report. The judge found probable cause that a crime had been committed and
15 issued a bench warrant, requiring that Dep. English serve it so that the wrong person
16 would not be arrested by accident.

17 1.23. Dep. English later located Hansen at her property in Lewis County. He
18 placed her under arrest. At one point, she grabbed something from her pocket and threw
19 it away from them. Dep. English retrieved the thrown item, which turned out to be a small
20 container of methamphetamine.

21 CONCLUSIONS OF LAW

22 Based on these findings the Court draws the following conclusions:

23 *CrR 3.5 Conclusions*

24 2.1. Statements made in response to custodial interrogation by the police must
25 be preceded by *Miranda* warnings to be admissible.

26 2.2. The defendant was not in custody for any of the relevant statements elicited
at the hearing, to wit, statements made on April 20, 2015. These statements are
admissible.

1 2.3. The defendant was placed in custody at the time of her arrest in June 2015,
2 but none of her statements then were relevant to this case. The State indicated that it
3 would not offer them. These later statements need not be considered.

4 *CrR 3.6 Conclusions*

5 2.4. The defense challenge in this case is that the failure-to-identify code
6 provisions are void for vagueness and that the bench warrant was issued without
7 probable cause.¹ The Court rejects both contentions.

8 2.5. First, the void-for-vagueness challenge. An as-applied challenge is the
9 appropriate form for the defendant's claim. *Spokane v. Douglass*, 115 Wn.2d 171, 182-
10 83, 795 P.2d 693 (1990).

11 2.6. The failure-to-identify provisions at issue here were constitutionally applied.
12 Those provisions are LCC 1.20.040(4)(b)-(c), LCC 8.45.130(4)(a), and LCC
13 15.05.110(b)(1)(b)-(c).

14 2.7. For purposes of this holding, the Court adopts the statutory interpretation
15 proposed by the State: each code provision, to establish the misdemeanor, requires
16 probable cause of a code violation and a failure to provide one's full name after a request
17 by an authorized official. Such an interpretation is narrower than the language of the
18 code provisions, which mention only an "alleged or apparent" violation and could be
19 construed to require one to disclose more than a full name. But, the State has asked for
20 such a limiting interpretation, and the Court declines to interpret the crime more broadly
21 than the State requests. See *State v. Rice*, 174 Wn.2d 884, 899, 279 P.3d 849 (2012)
22 (permitting a statute to be construed to preserve its constitutionality).

23 2.8. Here, an authorized individual, Padgett, had probable cause at least of a
24 solid waste violation under LCC 8.45.040. Upon his request for Hansen's full name,
25 Hansen provided only her first name. By her own testimony, she refused sarcastically to
26 provide her last name even after being advised that, by law, she had to provide the

25 ¹ There are other conceivable challenges the defense could have made, which would not have
26 been well-taken. For example, Hansen testified about Padgett and Dep. English passing through a locked
gate. But, it turns out that the gate was owned by a neighboring property owner, who consented to the
entry. So, a challenge based on an unlawful entry to speak with Hansen would not have succeeded.

1 information. So interpreted and applied, the code provisions here are no broader than
2 that allowed by *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 181-82, 124 S. Ct. 2451,
3 159 L.Ed.2d 292 (2004). Therefore, the provisions were constitutionally applied.

4 2.9. Second, the bench warrant. A bench warrant may be issued when there is
5 probable cause that the defendant committed a crime, and the defendant fails to appear
6 after sufficient notice.

7 2.10. The warrant was supported by probable cause: The district court found
8 probable cause for the alleged crime before the summons issued. Another finding of
9 probable cause is reflected in the district court docket on the day the warrant issued. This
10 Court has heard the facts outlining probable cause as well and finds them sufficient.

11 2.11. Sufficient attempts to give notice of the date, time, location, and purpose of
12 the hearing were given to the defendant to allow for the issuance of the warrant.
13 Specifically, the defendant had actual notice.

14 2.12. Therefore, issuance of the bench warrant was permissible.

15 2.13. The service of the bench warrant and search incident to arrest yielding
16 evidence in this matter were not challenged because, by the testimony, they appeared
17 entirely lawful.

18 2.14. Because the crimes alleged in district court were not void for vagueness
19 and the warrant issued lawfully, suppression is not appropriate.

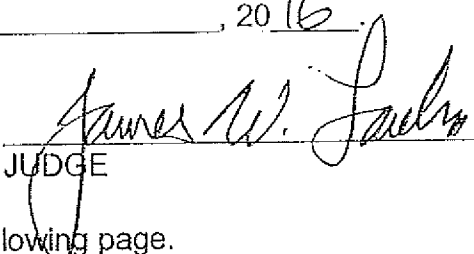
20 ORDER

21 ACCORDINGLY, it is ordered that:

22 3.1. All of the defendant's statements from April 20, 2015 are admissible if
23 relevant.

24 3.2. The motion to suppress is denied in its entirety.

25 DATED this 17 day of Feb, 2016.

26 
JUDGE

The parties' signatures appear on the following page.

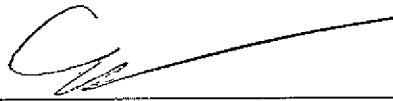
FINDINGS OF FACT, CONCLUSIONS OF
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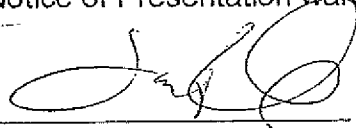
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APPENDIX C



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Rec'd & Filed
Lewis County Superior Court

FEB 24 2016

By Kathy A. Brack, Clerk Deputy *tw*
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SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

BOBBIE HANSEN, A.K.A.
BOBBIE HANSEN VALENTICH,

Defendant.

NO. 15-1-00299-1

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER FOLLOWING
BENCH TRIAL

This matter came on for a bench trial on stipulated testimony. The State was represented by DPA Eric Eisenberg. The Defendant was present and represented by attorney Jacob Clark. Having considered the stipulated testimony and exhibits, and being fully advised, the Court adopts the following findings, conclusions, and order:

FINDINGS OF FACT

The Court finds the following facts:

1.1. Lewis County Code Compliance Officer Smokey Padgett is authorized to enforce all of the county codes, including the solid waste, septic, and building codes. A sheriff's deputy is also authorized to enforce the codes.

1.2. On or about April 1, 2015, Lewis County Code Compliance Officer Smokey Padgett approached a property in Lewis County owned by Bobbie Hansen, the defendant. From the roadway, Padgett observed a building and a pickup truck containing a large amount of garbage.

1.3. On April 20, 2015, Padgett returned to Hansen's property with Lewis County

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER FOLLOWING BENCH
TRIAL

1 Sheriff's Office Deputy Tim English. The two were driving marked county vehicles.
2 Dep. English was in uniform, and Padgett wore his credential identifying him as a
3 county employee. Both men were on duty and had authority to enforce the solid waste,
4 septic, and building codes at that time.

5 1.4. Padgett observed the same building and the same garbage in the pickup
6 truck. Padgett believed that the building was over one story tall and contained a
7 fireplace, due the presence of a chimney. He thought from the presence of the
8 garbage, an RV, and dogs that someone was living in the building.

9 1.5. Padgett believed that a permit was required for the building, which he knew
10 no one had applied for. If he was correct, owning or occupying the building without a
11 permit was a civil infraction under the building code. He also knew that no one had
12 applied for a permit to store garbage on the property. Storing garbage without a permit
13 is a civil infraction under the solid waste code.

14 1.6. Before April 20, 2015, Padgett had sent a Notice of Violation to Bobbie
15 Hansen and had received a return signed by "B. Hansen." Hansen had sent email and
16 other communication to Padgett's department.

17 1.7. Despite this interaction, as of April 20, 2015 neither Padgett nor Dep.
18 English had ever met Hansen in person. They did not know if "Bobbie" was a woman or
19 a man. Padgett had been unable to find a photo of Bobbie Hansen through "DAPS," a
20 licensing database to which he had access, or "Spillman," a local database of law
21 enforcement contacts.

22 1.8. When they stood on the roadway at Hansen's property on April 20, 2015,
23 Padgett and Dep. English called out for someone to come speak with them. A woman
24 appeared from inside the building. Padgett and Dep. English did not know who the
25 woman was at the time. They learned later that it had been Hansen.

26 1.9. As Padgett and Dep. English began to walk up the driveway to speak to the
woman, she yelled at them to get off of the property, saying that they had no right to be
there. Padgett and Dep. English retreated to the roadway, off of Hansen's property,
while they attempted to speak with Hansen.

1.10. Padgett tried to explain that he was a code compliance officer and to speak

1 with Hansen about code violations he observed on the property. Hansen was
2 extremely difficult to communicate with. She kept telling them that they had no right to
3 be there and to get off the property.

4 1.11. Both Padgett and Dep. English, at separate points, asked Hansen to
5 provide her name. Hansen refused to provide this information. She denied being the
6 property owner.

7 1.12. Eventually, Padgett referred to the woman as "Bobbie," and she admitted
8 that her first name was Bobbie.

9 1.13. Padgett informed her that, by law, she had to provide identifying
10 information when asked by a code enforcement officer, and again requested her full
11 name. The woman refused. She denied committing any code violations.

12 1.14. Padgett and Dep. English eventually gave up trying to speak with Hansen.
13 The purpose of trying to speak with her was to explain the code violations in the hopes
14 of working them out. They were having enough difficulty that they did not think that
15 further conversation was helpful.

16 1.15. Padgett did not believe he had enough information to cite Hansen for the
17 civil infractions he had observed at this point. He referred the matter to the Lewis
18 County Prosecutor's Office.

19 1.16. The State charged Hansen as a Jane Doe in Lewis County District Court,
20 alleging that she wilfully failed to provide identifying information as required by three
21 sections of the Lewis County Code. The court issued a summons.

22 1.17. In the meantime, Padgett had looked on Facebook and located a Bobbie
23 Hansen whom he recognized, by her picture and references to the location of the
24 property, as the Bobbie Hansen he and Dep. English had contacted. Padgett and Dep.
25 English would both identify Hansen, the defendant in this case, as the person who
26 refused to provide her full name to them.

1.18. Hansen failed to appear for arraignment at District Court, and a bench
warrant issued for her arrest.

1.19. On June 8, 2015, Dep. English located Hansen at her property in Lewis
County. As he placed her under arrest, she grabbed something from her pocket and

1 | threw it away from them. Dep. English retrieved the thrown item. It was a small glass
2 | tube containing methamphetamine.

3 | 1.20. The exchange between Hansen, Padgett, and Dep. English in which
4 | Hansen refused to give her full name or other identification occurred in Lewis County,
5 | Washington.

6 | 1.21. Hansen's arrest, in which the vial of methamphetamine was found,
7 | occurred in Lewis County, Washington.

8 | 1.22. The photographs marked and admitted in this case were taken by
9 | Smokey Padgett. They fairly reflect what he observed at Hansen's property on the date
10 | listed on each photograph.

11 | 1.23. The defendant's testimony in this matter was not credible enough to raise
12 | a reasonable doubt as to the court's conclusions, below.

13 | CONCLUSIONS OF LAW

14 | Based on these findings the Court draws the following conclusions:

15 | 2.1. The defendant is guilty beyond a reasonable doubt of possession of
16 | methamphetamine as charged. On June 8, 2015 in Lewis County, the defendant had
17 | the methamphetamine in her pocket before removing it during the course of her arrest.

18 | 2.2. The defendant is guilty beyond a reasonable doubt of wilfully failing to
19 | provide identifying information as charged. In Lewis County on April 20, 2015, Smokey
20 | Padgett was an authorized official for all of the codes. The solid waste violation, at
21 | least, was apparent enough for probable cause to support to request for identification.
22 | Padgett requested the defendant's name and did not receive her full name. The refusal
23 | was willful because the defendant was warned that she had to provide the information,
24 | and she still refused.

25 | 2.3. On the question of whether the first name "Bobbie," was enough
26 | information to identify the defendant: Bobbie, Rob, Robbie, and other nicknames all
stand for the same name. Padgett was entitled to know the correct full name of the
person he was attempting to cite for an infraction; the name "Bobbie" was not enough.

2.4. If county officials happen to have information that might allow them to
guess the identity of a person they have lawfully asked to identify herself, it does not

1 relieve the person requested of the duty to identify herself. Therefore, the fact that
2 Padgett knew some information about the defendant before his request is not a
3 defense.

4 **ORDER**

5 ACCORDINGLY, it is ordered that:

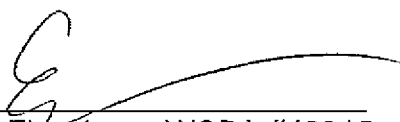
6 3.1. The defendant is guilty of both crimes as charged. A judgment and
7 sentence shall be filed at the time of sentencing, reflecting this order.


8 DATED this 24 day of FEBRUARY, 20 16.

9 
10 JUDGE

11 Presented by:

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13
14 Eric Eisenberg, WSBA #42315
15 Lewis County Prosecutor's Office


16 Jacob Clark, WSBA #38768
17 Attorney for Defendant


18 Bobbie Hansen
19 Defendant

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TILLER LAW OFFICE

August 31, 2016 - 4:20 PM

Transmittal Letter

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Case Name: State v. Hansen

Court of Appeals Case Number: 48841-8

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Statement of Arrangements

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Comments:

No Comments were entered.

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